

Before Railway Claims Tribunal, Ahmedabad Bench

Coram : Shri Vinay Goel, Member (Judicial)
Shri Raj Kumar Manocha, Member (Technical)

CASE No. OA(IIu)/ADI/2022/0068

Date of Institution: 16.09.2022

Date of Decision: 27.05.2024

1. **Parmar Gajraben Laxmanbhai**, Aged about – 45 yrs.

(Wife of the deceased)

2. **Princekumar Laxmanbhai Parmar**, Aged about – 20 yrs.

(Son of the deceased)

3. **Tanishaben Laxmanbhai Parmar**, Aged about – 18 yrs.

(Daughter of the deceased)

All Residing at 140, Sajjan Park Society, Junabazar,

Karjan Tal & Dist. Vadodara, Gujarat-391240.

.....APPLICANT

-VERSUS-

Union of India Through General Manager,

Western Railway, Churchgate, Mumbai-400020.

.....RESPONDENT

CLAIM FOR Rs. 8,00,000/-

Mr. K.M. Shah, Ld. Counsel for Applicants.

Ms. Ruchita Jain, Ld. Counsel for the Respondent.

JUDGEMENT

This OA has been filed by three Applicants i.e. wife, son and daughter of the deceased under section 16 of the Railway Claim Tribunal Act, 1987 read with section 124 - A, 125 & 123 (c) (2) of the Railways Act, 1989 for compensation from Respondent Railway on account of alleged death of Shri Laxmanbhai Dhanjibhai Parmar, age - 48 yrs. (hereinafter referred to as 'deceased') in an alleged untoward incident during alleged train journey, on the ground that they are the dependents of the deceased.

2. Basic details relating to accident as contained and alleged in the Application:-

- a) **Date of accident:** 02.06.2022
- b) **Person Deceased:** Laxmanbhai Dhanjibhai Parmar, age - 48 yrs.
- c) **Relationship of the Applicant Nos. 1 and 3 with the deceased:** Wife, Son and Daughter of the deceased respectively.
- d) **Train involved and transit details:** The deceased on 02.06.2022 was travelling by train No. 12929 Valsad – Vadodara Intercity SF Express from Bharuch to Miyagam Karjan railway station with a monthly pass bearing No. A 89081003 valid up to 09/06/2022.
- e) **Untoward incident narrated:** During the course of journey, due to an unexpected sudden jerk of the bogie of the train and push of the passenger, he fell down from the running train at platform No. 3 of Bharuch railway station at K.M. No. 325/24. Due to this accident he sustained serious injuries of his head and other parts of the body and he died on the spot.
- f) **Jurisdiction:** Place of the incident was Bharuch railway station, this Bench of the Tribunal has territorial jurisdiction.

3. Salient features of reply:

- a) **Averments in reply:** The deceased was a bonafide passenger and Respondent denied this Untoward Incident and its Liability to pay compensation because he died due to his own negligence. Para – 4 of Written Statement is reproduced as under

“It is submitted that as per DRM Report the deceased was having Valid Pass and therefore, bonafideness cannot be denied. However, the deceased fell down and got seriously injured while bearding the running train no. 12929 and died on the spot. The act of the Deceased was attributable to his self-infliction, own criminal act, severe gross negligence and not fallowing the Railway Rules and Railways Act in spite of the fact that repeated announcement/requests are made

on platform on loud speaker for following the railway rules. CCTV footage available covering the alleged incident clearly reveals that the deceased tried to board the running train after it already started and thereby the deceased didn't follow the railway rules/act. The Train manager categorically stated in his statement that he saw that after departure of Train No. 12929 from Bharuch Railway Station, one person fell down while trying to board the running train from Platform No. 3 and on seeing this, the Train Manager immediately applied emergency break and during that time ACP was also done and the information was given by him through VHF set to Loco-Pilot as well as Station Master, Bharuch. Therefore, it was observed that the deceased committed an offence punishable under applicable provision (Section 156) of the Railway Act, and hence, the Applicants are not entitled to get the compensation. Further, the answering Respondent denies that the incident as described in the Claim Application as "UNTOWARD INCIDENT" within the definition provided under Section 123 (c) (2) of the Railways Act, 1989. It is further submitted that, the applicant/s failed to prove the incident amounts to Untoward Incident as postulated into the Railways Act. The circumstances show that the alleged incidence falls within the purview to Section 124A of the Railways Act and therefore, no compensation is payable to the Applicant/s and hence, Application filed by the Applicant/s is required to be dismissed."

b) **Crux of DRM Report:** "उपरोक्त अनपेक्षित घटना के जांच निष्कर्ष में उपलब्ध जीआरपी/आरपीएफ कार्यालय में सूचना देने वाले स्टेशन अधीक्षक/भरूच एवं ऑन ड्यूटी ट्रेन मैनेजर के कथन दर्ज किए तथा सवारी गाड़ी संख्या 12929 (वलसाड इंटर सीटी एक्सप्रेस) भरूच स्टेशन पर आगमन एवं प्रस्थान के समय का **CCTV** फुटेज चैक करने पर उक्त मृतक व्यक्ति **CCTV** निगरानी में भी चलती ट्रेन में चढ़ने का प्रयास के दौरान गाड़ी एवं प्लेटफार्म पर रोल होता दिखाई दे रहा था जिससे पाया गया है की उक्त घटना मृतक द्वारा चलती ट्रेन में चढ़ने के दौरान स्वयं की लापरवाही के कारण घटित हुई है। रेल गाड़ी में चलती ट्रेन में चढ़ना-उतरना रेल अधिनियम की धारा 156 के तहत दंडनीय अपराध का भी दोषी है।"

4. From the pleadings, following issues were framed on 23.12.2022.

1. *Whether deceased was travelling on a valid Railway journey ticket and was a bonafide passenger of the train in question at the relevant time?*
2. *Whether the deceased met with an untoward incident due to fall from passenger carrying train, suffered injuries and died as a result thereof and the present case is covered under the definition of Section 123 (c) (2) of the Railways Act, 1989?*
3. *Whether the applicants are the sole dependents of the deceased and are entitled to compensation as claimed, as per Section 123(b) of the Railways Act, 1989?*
4. *To what Relief?*

5. Applicants Evidence and Respondent Evidence: Applicants no. 2 has filled his affidavit as AW/1 and he was cross-examined on 04.05.2023 by the Respondent.

6. Description of the documents filed by Applicants certified copies are as under.

I-Card of the deceased - Exh.A/1, Railway Monthly Pass - Exh.A/2, Memo - Exh.A/3, Memo - Exh.A/4, Vardhi - Exh.A/5, Inquest Panchnama - Exh.A/6, Panchnama of place of incident - Exh.A/7, P.M. Report - Exh.A/8, Ration card - Exh.A/9, Aadhar card of deceased, App. No. 1 and 2 - Exh.A/10 to Exh.A/12, Pan card of App. No. 2 - Exh.A/13, Aadhar card of App. No. 3 - Exh.A/14, Election card of App. No. 2 - Exh.A/15, Bank Pass Book of App. No. 1,2 and 3 - Exh.A/16 to Exh.A/18.

a. The Respondent Railway administration adduced documentary evidence as the DRM report and filed examination-in-chief on affidavit of Sh. Ishwarbhai Haribhai Parmar S/o Sh. Haribhai Parmar, Service as a Train Manager/BRC as RW/1 and he was cross-examined on 27.06.2023 by the Applicant.

7. At the time of arguments, the Ld. Counsels for parties argued as under:

Counsel for the Applicants submitted; that on 02.06.2022 the deceased, having MST, was travelling from Miyagam Karjan to Bharuch station by unknown train; that during course of the journey he accidentally fell down at platform no.3 of Bharuch Railway station; that the deceased was bonafide passenger; that the Applicants being dependents are entitled to compensation.

Ms. Jain submitted; that as per CCTV footage, available on record, the deceased was trying to board running train hence the incident has occurred; that the deceased died due to his self-inflicted injury for which no compensation is payable; that the OA liable to dismiss.

FINDINGS

8. We have carefully gone through the pleading of the parties, material made available on record, evidence adduced on behalf of applicants and heard the arguments advanced on behalf of rival parties by their counsels. Our findings on the aforesaid issues are as under.

Reasoning of Issue No. 1 & 2

9. Both these issues have been taken up together to avoid repetition and considering their inter-connectivity. Our findings on the issues are as under:

10. There is no dispute about the bonafide passenger status and on record the Applicants have proved by producing Monthly Traveling Pass bearing No. A 89081003 as Exh.A/2. On the date of incident it was valid for travel. It has been admitted by the Respondent that deceased was a bonafide passenger. The Applicant appeared as AW/1. As the railway pass was recovered and Railway has also admitted recovery of railway pass. So, we find no legal impediments in coming to the conclusion that deceased was a bonafide passenger (as defined in section 2 (29) of Railway Act).

11. It is the case of the Applicants that deceased was to travel from Bharuch to Miyagam Karjan railway station, on 02.06.2022. He was having a Railway

Pass bearing No. A 89081003 and boarded in a train departing from Platform Number 3 of Bharuch Railway station. Due to rush, he could not get seat inside the coach, so he was standing near the door of the coach and the deceased accidentally fell down from the running train, soon after boarding. Whereas, the Respondent in its Written Statement, pleaded that deceased fell down from the train No. 12929 Valsad – Vadodara Intercity SF Express, when the train started to depart from Platform Number 3 of Bharuch Railway station, as the person was trying to board the running train. The Train Manager of the train applied emergency brakes and reported the matter to Station Master of Bharuch, and after handing over the injured, he proceeded further.

12. The Railways denied the untoward incident and has come clear that it was a case of self-inflicted injury (proviso 124 – B of Railway Act). However, the Respondent admitted recovery of railway pass, as pleaded in the original application (OA) and Railways have annexed the CCTV footage as evidence.

13. The victim was found in a dead condition on platform number 3 of Bharuch Railway station and body was shifted for further procedure by Railway authorities. So, his death was a consequence of railway accident. To that extent, there is no dispute. Now, the question before the Tribunal is whether the deceased met with an untoward incident or it was a case of self-inflicted injury. We have carefully watched the CCTV, annexed with the DRM report, in the presence of both the Counsels at the time of Final arguments and further, replayed the said CCTV footage at the time of dictation of the Judgement. Before proceeding further, we would like to reproduce the cross – examination of AW/1 – Princekumar Laxmanbhai Parmar (son of the deceased)

“दुर्घटना दिनांक 02.06.2022 को घटित हुई थी। मेरे पिताजी दुर्घटना के दिन भरूच से कर्जन की यात्रा कर रहे थे। यह दुर्घटना लगभग सुबह 09:15 पर हुई थी। मेरे पिताजी वलसाड इंटरसिटी ट्रेन ए यात्रा कर रहे थे। यह कहना गलत है कि मेरे पिताजी ने अफेद रंग का लाइन वाला कमीज पहना हो बल्कि उन्होंने आसमानी रंग का लाइनिंग वाला कमीज व गहरे नीले रंग कि पेंट पाहने थी। उनके पास दुर्घटना के समय एक काले रंग

बेग भी था। मैंने दुर्घटना घटित होते नहीं देखी। यह दुर्घटना जब मेरे पिताजी ट्रेन में चढ़ रहे थे उस समय ट्रेन व यात्रीयों का धक्का लागे से घटित हुई। यह कहना गलत है कि मेरे पिता ट्रेन खाना होने के बाद चढ़ने गए हो। इस कारण से यह दुर्घटना घटित हुई हो। इस दुर्घटना के बारे में मुझे पुलिस ने उसी दिन सुबह 10:30 के लगभग बताया था। मैंने जो दस्तावेजों का अनुवाद प्रस्तुत किया है वह मैंने नहीं किया है। वह मेरे अधिवक्ता द्वारा किया गया है।”

14. It has been pleaded in OA that it was a case of accidental fall, whereas, in the Written Statement, the Respondent has categorically pleaded that deceased tried to board the running train. Thus, in reference of Chapter XIII of Railway Act, a piece of Welfare Legislation, the person tried to board the train, soon after its start, and in the mean-time, train got some momentum and on applying of emergency brakes, train came to halt. All such events have been duly recorded in a camera, in its single frame.

15. From the CCTV footage, it can be gathered that the train was not in high speed, boarding from it, would have dangerous to the life of the deceased. There is no straight jacket formula to assess criminality and intentions on the part of the victim. Each case has its own unique circumstances. The recording of fall and halt of the train on application of emergency brakes in a single frame, itself speaks about the speed of the train. The train stopped at the distance of few feet after incident, this indicates that the speed of the train was not on the higher side. The negligence and carelessness on the part of deceased, cannot be ruled out or denied but it is not of such magnitude which may disentitles the family from the benefit of Welfare Legislation. So, it can be safely concluded that element of criminal negligence on the part of the deceased is little bit missing and it would give rise to greyish situation where two interpretations of the events are possible. We would like to quote judgement of Prabhakaran Vijaykumar by Hon’ble Supreme Court, case No. Appeal (civil) 6898 of 2002

“12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for

whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

13. xxxxxxxx

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

16. So, taking liberal and pragmatic view, we are of considered opinion despite negligence on the part of the deceased, this happening/incident can be taken as an untoward incident under section 123 (C) 2 of the Railway Act. Accordingly, Issue No. 1 and 2 is decided in favour of the Applicants and against the Respondent.

Reasoning of Issue No. 3

17. The Applicants have proved on record, Ration card as Exh.A/9, KYC documents from Exh.A/11 to A/18. The Respondent has failed to dispute inter-se relations of Applicants and their relationship with deceased. We find no

legal impediment to hold that Applicants are the legal heir/ dependent upon deceased. Upon admission of other factors, applicants are entitled to get compensation.

18. Thus, the Applicants in this case will be entitled to get Rs. 8,00,000/- as compensation from the Respondent Railway Administration on account of death of Shri Laxmanbhai Dhanjibhai Parmar as prescribed under part-1 of the Schedule appended to Rule 3 (3) of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 as amended on 22.12.2016 w.e.f. 01.01.2017. Both these issues are decided accordingly.

19. On the facts and in the circumstances of this case, we find it just and proper to award compensation as mentioned below.

ORDER

20. The claim application is allowed. The Respondent shall pay to the Applicants in a sum of Rs.8,00,000/- (Rs. Eight Lakh only) as compensation as per apportionment given below within 30 days from the date of this order. The awarded sum will carry simple interest @ 9% per annum from the date of incident i.e. 02.06.2022 till the date of this order. If the Respondent Railway fails to pay the amount within above stipulated time (30 days), the awarded sum will carry simple interest @ 9% per annum from the date of incident till the date of realization.

21. The Respondent Railway Administration is directed to deposit the whole amount along with interest with the Registry of RCT/Ahmedabad within a period of 30 days from the date of this order. Further the Respondent is directed to place the proof of awarded amount on record with up to date interest along with the calculation sheet.

22. The Registry is directed to disburse the total compensation amount as per detailed apportion as given below:

Applicants' Name	Awarded Amount	Amount to be given through ECS/NEFT	Amount to be invested under Annuity Scheme
Applicant No.1 Parmar Gajraben Laxmanbhai	6 Lakh + accrued proportionate interest.	Rs. 60 Thousand + accrued proportionate interest.	Balance amount of Rs. 5,40,000/- (Five Lakh Forty Thousand) only shall be split into 54 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 54 months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Account.
Applicant No.2 Princekumar Laxmanbhai Parmar	1 Lakh + accrued proportionate interest.	Rs. 10 Thousand + accrued proportionate interest.	Balance amount of Rs. 90,000/- (Ninety Thousand) only shall be split into 09 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 09 months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Account.
Applicant No. 3 Tanishaben Laxmanbhai Parmar	1 Lakh + accrued proportionate interest.	Rs. 10 Thousand + accrued proportionate interest.	Balance amount of Rs. 90,000/- (Ninety Thousand) only shall be split into 09 fixed deposits of Rs. 10,000/- each and invested for a period of 01 to 09 months in the ascending order. The bank shall release the amount monthly with accumulated interest upon maturity of each of these deposits to the credit of the respective Bank Account.

23. The Applicant(s) is/are hereby directed to furnish the particulars of his/her/their savings bank account of a Nationalized/Scheduled bank *near to his/her/their permanent place of residence* along with a copy of Aadhar Card, PAN card, two photographs, specimen signature and pass book of the bank with necessary endorsement of the bank that no debit card/Cheque book has been issued, with the Registry of this Bench. The Applicant(s) is/are directed to

produce the copy of the order passed by the Tribunal before the concerned bank whereupon the bank is directed to make an endorsement on the passbook.

24. The claimants are further directed to submit Form 15G or Form 15H (for senior citizen) to the Presenting Officer of the Railway (as applicable under sub-section (2) of section 19 of the Railway Claims Tribunal Act, 1987) within the 30 days from this order otherwise the Railway Administration deduct the applicable TDS as per the provisions of the income tax act.

25. The Registry is directed to defer the disbursement of award amount till the passbook of saving bank account of the claimant(s) in a bank near the place of his/her/their permanent residence is not produced along with necessary endorsement.

26. The Registry is further directed to ensure that the statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished by the Bank to the claimant(s).

27. Further, we deem it proper to direct the concerned bank that:

- (a) The Bank shall not permit any joint name to be added in the savings bank account or fixed deposit amount of the claimant(s) i.e. savings bank account of the claimant(s) shall be an individual bank account and not joint account.
- (b) The bank shall not issue any Cheque book and debit card to the claimant(s). However, in case the debit card or Cheque has already been issued, bank shall cancel the same before the disbursement of the awarded amount.
- (c) No loan, advance, withdrawal or premature discharge is allowed on fixed deposit without the permission of the court.
- (d) The bank shall make an endorsement on the pass book of the claimant(s) to the effect that no Cheque book and/or debit card have been issued.

(e) The statement containing FDR number/FDR amount/date of maturity and maturity amount shall be furnished to the claimant(s).

(f) The Bank is directed not to permit any debit to Saving Bank of Applicant(s) from any electronic channel or e-payment platform and to permit the claimant(s) to withdraw money from his/her/their savings Bank Account by means of a withdrawal form only.

28. The Registry is directed to send a free certified copy of this judgment directly to the Respondent and the Applicant(s) at his/her/their postal address mentioned in the claim application by Register A.D. in view of Rule 34(3) of the Railway Claims Tribunal (Procedure) Rules, 1989.

29. In terms of the above, the present claim application is disposed of. Let this case file be consigned to the Records Room. No order as to costs.

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)

Judgment pronounced and signed in open court today i.e. on 27.05.2024.

Place: Ahmedabad

Date: 27.05.2024.

AHMEDABAD BENCH

[R.K. Manocha]
Member (Technical)

[Vinay Goel]
Member (Judicial)